IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

Crl.Rev.Pet.No. 1060 of 2000()

CC.737/1997 of JUDL.MAGISTRATE OF FIRST CLASS COURT-II, KANNUR

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REVN. PETITIONER(S):

SHAJI KEZHODATH,
S/O.DAMODARAN NAMBIAR,
AGED 30 YEARS, 'TRIVENI',
CHIRAKKAL AMSOM DESOM, KANNUR.

BY ADV. SRI.M.K.SUMOD

RESPONDENT(S):

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1. ASHOKAN, S/O.ACHU,
AGED 48 YEARS, PUTHIYAPPA,
P.O. PUTHIYANGADI, KOZHIKODE.

2. STATE OF KERALA REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

ADV. SRI.P.K.RAMKUMAR FOR R1
PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21.3.2007, THE COURT ON 21/03/2007 PASSED THE FOLLOWING:

K.HEMA, J.

CRL.R.P.NO.1060 of 2000

Dated this the 21st day of March, 2007

O R D E R

The defacto complainant is the revision petitioner. The first respondent is the accused. On a complaint filed by PW1, a case was charge sheeted against first respondent for offence under Section 420 of the India Penal Code ('IPC', for short). According to prosecution case, on 10.4.1996, from the house of PW1 the accused obtained Rs.30,000/- and on 27.5.1996 he obtained a further amount of Rs.30,000/- from Bombay Airport, which the complainant gave it to the accused. Only because of the dishonest inducement made by the accused on the complainant. He was induced to deliver the said amount, on misrepresentation that complainant will get a job of electrician, with a salary of 700 Riyals in Soudi Arabia and that he will arrange a Visa for him. Though Visa was arranged and he reached Soudi Arabia, he was not given electrician job. But, he was doing the loading and unloading work. The accused has thereby cheated the complainant.

2. On going through the evidence adduced in this case, learned Magistrate found that no offence under Section 420 IPC is made out because PW1 admitted in cross-examination that he had obtained electrician Visa as promised by the accused and Exhibit D1 also shows that PW1 got an employment as electrician. Whatever the accused

promised was arranged by the accused. Therefore, the lower court was of the view that no element of cheating was there, as per the evidence. The accused was acquitted and hence the defacto complainant challenged the order of acquittal.

3. Learned counsel for the appellant-revision petitioner argued that the lower court failed to consider that letter written by the accused to the complainant which is marked as Exhibit P1. According to him, Exhibit P1 itself will prove the prosecution case that he did not get a job of electrician. On going through Exhibit P1, I find that there is nothing therein to show that petitioner did not get electrician job. Exhibit P1 is bereft of any materials to conclude that he did not get the job of electrician. Except that the complainant was dissatisfied by some reason or other, for example, there is nothing in Exhibit P1 to come to a conclusion that the petitioner was not employed as an electrician.

4. In fact PW1 himself admitted in cross-examination that he was given an electrician Visa. According to the complainant, all what is promised by the accused is that he will arrange an electrician Visa. It was by representing that a Visa for electrician job could be arranged that the accused allegedly induced the complainant to deliver money to him. The evidence of PW1 itself proves that the Visa was arranged for electrician work. Therefore, it cannot be said that there was

deception as alleged by the prosecution.

5. The case of the complainant is that the accused promised that the complainant would get 700 Riyals as salary. But he did not get any salary. Thereby the accused cheated him. The evidence of PW1 on this aspect, it is submitted, was not considered by the trial court. It is true that the trial court did not refer to the salary. But, even on consideration of this argument on the basis of the evidence adduced in this case, I find that petitioner did not succeed in proving the offence of cheating. PW1 gave evidence that it was promised by accused that job will fetch 700 Riyals as salary and that he was not given any salary.

6. But a reading of Exhibit P2 would show that even according to him, he came to know that he will get only 500 Riyals as salary instead of 700 Riyals. The petitioner has not alleged in Exhibit P2 that he was not getting any salary at all. It is a new case developed at the time of evidence. Even otherwise, if as a matter of fact the petitioner was made to do some work other than what is offered as per the Visa, he can take action against the sponsor. But PW1 has not taken any action against the sponsor.

7. On the other hand, the agent who arranged the Visa issued a letter to PW1 as revealed from Exhibit D1 asking for compensation, since he made problems with the sponsor in damaging some articles, misbehaving etc. As per Exhibit D1, petitioner was informed that he

was given the agreed job and salary. But he had refused to work. The letter also discloses that the petitioner had supported the process of forming a union on reaching Soudi Arabia and started fighting with the sponsor and the sponsor incurred heavy loss, since PW1 spoiled several machineries to take revenge against the sponsor. PW1 has no case that he had not received such a letter from the Visa agent. It is seen from Exhibit D1 that it is not the accused who had arranged Visa, but it was other agent. Taking all these facts into consideration, I find that there is absolutely nothing to interfere. The court below has rightly acquitted the accused.

8. Learned counsel for the first respondent supported the judgment and contended that there is absolutely no ground to interfere with the findings. I fully agree with him. He also made clear that the case set up by the complainant was that promise was in respect of arrangement of Visa. As per the evidence of PW1, the promise of arrangement of Visa for electrician job was fulfilled by the accused. PW1 has no case that the accused promised to ensure that the accused is given a job of electrician in Soudi Arabia. In the absence of any such allegation, even if the complainant was made to do some other work, the accused cannot be said to be guilty of cheating only because he had stated that he would arrange a Visa for electrician job. Whatever he had promised, it has come out in evidence, was arranged.

This Revision petition is dismissed.

K.HEMA, JUDGE

vgs.